Defense Teame

Mr. Ibrahim Ali Saleh

Mr. Ahmed Abdel Hafiz El Sayed

Mr. Abdel Fattah Moustafa Ramadan

Ms. Fatma Rabie

Mr. Abdel Kader Hashem Abdel Kader

Dr. Awad El Mor

Dr. Mohamed Abol Fettouh

Dr. Mohamed Eid El Gharib

Dr. Ahmed Talaat

Mr. Abdel Aziz Mohamed

Witnesses

Dr. Ahmed Kamal Aboul Magd.

Said Elwani Al Naggar.

Abdel Moniem Said Ali.

Mohamed Ibrahim Shaker.

Munir Fahkri Abdel Nour.

Ali Mohamed Ali Salem.

Mohamed Mahmoud Al Gohari.

Ahmed Mahmoud Abdel Halim.

Hossam Hassan Badrawi.

Introduction

The case against Saad Eddin Ibrahim, one of Egypt's most prominent scholars, is perhaps unique in the history of Egyptian criminal law, unique by virtue of two features: the unparalleled selectivity by the state in its application of the law, and an apparent vendetta against Prof. Ibrahim which is evidenced not only by the vague and seemingly concocted charges brought against him but by the virulent concerted attack on his person in the government press before the trial even began. During the Nasser regime, Dr. Ibrahim would have been simply arrested and thrown in jail for an ind eterminate period without need for any formal proceedings. But times have changed, and the state now cynically cloaks its activities in the trappings of a court procedure, however poorly enacted. And so it came to pass, in October 2000, that Saad Eddin Ibrahim, together with 27 of his associates, was charged with the commission of four Crimes.

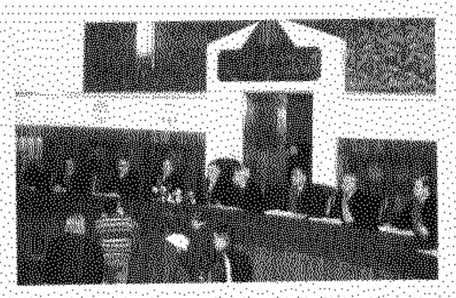
The case of Prof. Ibrahim and his 27 associates extended for 33 months during which he stood trial twice before two different panels of the State Security Court, and one final trial before the Court of Cassation, Egypt's Supreme Court.

In the following we briefly recap the background of the case and its procedural history then turn to a detailed exposition of the Prosecution's case and that of the Defense, then conclude with a summary of the final ruling of the Court of Cassation on March 18, 2003 which acquitted Prof. Ibrahim and all the other defendants.

Background and Procedural History

For years Professor Ibrahim had been a fervent activist in the cause of liberal democratic reform in Egypt. His long time advocacy of freedom has made of him almost an icon of civil society within the community of Arab human rights defenders. ***He has been involved in the founding of some of the most prominent human rights institutions in the Arab world, and has persistently pushed for greater political participation for all political factions, including the Muslim Brotherhood, even while the government was suppressing their leaders.***

Professor Ibrahim's criticism of the lack of democracy and the violations of human rights in Egypt had been longstanding. Just before his arrest he was organizing civil society's monitoring of the upcoming 2000 November elections. He had also written at that time an article sharply criticizing Egyptian President Hosni Mubarak's apparent intention to groom his son for succession to the presidency, comparing him to a hereditary monarch. There is no doubt that this criticism together with the



Intensive Attendance From the Judiciary

intended monitoring of the elections, which he had repeatedly claimed were rigged by the government, must have provoked the ire of the regime, thus drawing upon himself the wrath of its State Security apparatus.

Although Professor Ibrahim has long been a controversial figure in Egyptian society yet even the government respected his work and sought his advice from time to time. But all this changed substantially on ***June 30th, 2000 when as Professor Ibrahim was sitting at his study late in the evening more than two dozen armed policemen raided his home and arrested him.*** The nature of the arrest of Professor Ibrahim and his 27 associates were characterized by the features usually found in repressive regimes: refusal to allow contact with family and lawyers, late-night interrogations, and strategies of intimidation.

The first trial before the State Security Court lasted several months with the court convening only periodically. Most of the Prosecution's evidence was not shared with the defense, but the latter was allowed three hours in which to examine the documents upon which the Prosecution's case rested, and this only in the presence of the Prosecution's lawyers.

On 21st May, 2001, the State Security Court rendered its judgment90 minutes after the defense's closing argument! Professor Ibrahim was sentenced to 7 years in prison for illegally receiving EC funds, defaming the state, and the misappropriation of the EC funds. The other defendants received punishments from one-year prison sentences to suspended sentences.

On appeal the Court of Cassation on 6th February 2002, overturned the sentence, on grounds that the State Security Court's judgment had not been supported by the evidence, that the right of the defendants had not been fully observed, and that the Court had erroneously applied the law, in addition to having failed to consider inconsistencies between the testimony of witnesses and failure to sufficiently consider claims of moral coercion by the police. ***When presented with evidence that one of the confessions by a defendant had been obtained by the use of moral coercion, the trial court had not properly investigated this allegation which, if true, would have rendered the confession invalid.***

A new trial was therefore set for the 27th April 2002 before a new panel of the State Security Court. This second trial reaffirmed the first sentence. Its ruling was again appealed to the Court of Cassation which once more overturned the sentence for

similar defects as those found in the first trial. According to the law if a judgement is overturned twice, the Court of Cassation itself reviews both the law and the facts of the case, including re-evaluation of all the evidence. The judgement of the Court of Cassation in this third trial was handed down on 18 March 2003. It exonerated Professor Ibrahim as well as the other defendants of all wrongdoing.

The Prosecution's Case and the Defense

The following is a summary of the charges brought against prof. Saad Eddin Ibrahim, as well as the arguments presented by both the Prosecution and the Defense during his two trials before State Security courts that sentenced him to 7 years of imprisonment, and his third and final trial by the Court of Cassation after the State Security Courts' sentences were twice overturned on appeal.

Charge #1: That the defendant conspired to bribe government employees of the State-owned TV and Radio.

> ***On this charge: the defendant was acquitted in the first trial by the State Security Court on 21, May 2001***

Charge #2: that the defendant violated Military Decree No. 4 of 1992, by accepting--as Chairman of the Ibn Khaldoun Center for Development Studies (ICDS)---donations from the European Commission (EC) amounting to 245,000 Euro, as well as accepting---as Treasurer of the Association for the Support of Women Voters (HODA)---the sum of 126,000 Euro, without taking prior permission from the Ministry of Social Affairs.

The Prosecution's Evidence and Argument:

(a) That the European Commission did in fact fund two projects of **ICDS,** and **HODA;** (b)That although the Military Decree in its preamble states that its purpose was to prohibit the kind of fund-raising activities normally undertaken to raise **Free Donations** from the general public---listing gala events, athletic competitions, and such similar means---to help victims of **natural catastrophes**, yet the Decree concluded that list by the all inclusive statement **"or for any other reason."** And that, moreover, the Decree did not explicitly specify that it applies only to entities registered as NGOs (non-governmental organizations).

The Defense's Argument:

1- It is a settled point of law that the meaning of a legal clause is to be sought in the totality of the statute and the reasonableness of the meaning assigned thereto. It is

also generally conceded that a ***Military Decree is enacted as an expression of a specific purpose; that is, it is not intended as an abstract proposition but is an expression of policy arising out of specific situations and intended to attain particular ends. The specific situation that Military Decree No.4/1992 was intended to address was the devastating incident of the 1992 earthquake, and the fear of exploitation of that catastrophe by certain individuals and groups to collect donations that go into their own pockets.*** It was also intended to prevent landlords and tenants from exploiting the earthquake to circumvent housing laws. This is why the decree included items dealing with "donations" as well as others dealing with "housing." Clearly there is nothing that links these two seemingly disparate items donations and housing save the fact of the earthquake. Hence also the fact that the statute was promulgated by military decree, because of the urgency of the situation, rather than wait and have it pass through the legislature as would have been the normal procedure had there not been the emergency of the earthquake.

In view of the above, it is not reasonable to apply that Decree to the financial activities of two private entities contractually committed to execute a particular project, as is the case between the EC and the ICDS.

2- Moreover, the Decree was clearly intended to apply ***only to NGOs,*** by virtue of the fact that the authority which the Decree specified for issuing permissions was the Ministry of Social Affairs, which is the ministry in charge of NGOs. Consequently, the Decree does not apply to either the Ibn Khadoun Center (ICDS) or the Association in Support of Women Voters (HODA), since both are registered as ***private companies, not as NGOs,*** and the Ministry of Social Affairs has no jurisdiction over civil companies which fall under the purview of the Ministry of the Economy.

3- The funds paid by the European Commission to both ICDS and HODA were ***not free donations***. They were the shares of the EC in the funding of two projects, as per the terms and conditions of written contracts which defined clearly the tasks, responsibilities, and rights of the contracting parties. These included that ICDS and HODA contribute 20%, and 40% respectively, of the total cost of the projects and the European Commission's right to audit the accounts of these projects, and, in case of default by its Egyptian partners, its right to cancel the contracts and demand return of all monies it had paid, In short, both ICDS and HODA are private civil companies and the nature of their relationship with the European Commission was governed by

The kind of detailed contractual document normally drawn between two private organizations. The exhaustive clauses of these contracts and their stringent conditions categorically exclude the categorization of the funds paid by the EC as the kind of **free donations** referred to in the military Decree No. 4.

4- With regard to the phrase ***"or for whatever reason"*** in the Military Decree which the Prosecution claims covers ***any*** and ***all*** funds received by Egyptians regardless of whether they are free donations or not, the defense submitted two arguments, each of which was sufficient to negate the Prosecution's contention that that phrase is *all-inclusive:*



Wife: Barbara; Daughter; Randa; Lifetime Friend: Dr.Said El-Naggar and Brother: Ahmad Rizk

The first, is that it is a settled point of law that when general words such as "or for any other reason" follow a listing of things (such as the list of fund-raising activities prohibited in the Decree), then such words are ***not*** to be construed in their widest sense, but are held to apply only to things of the ***same nature*** as those specifically listed. Moreover, if the phrase "or for whatever reason" was indeed intended to cover all transfers of funds, unconstrained by any conditions or events, then all that came before that allegedly all-embracing phrase (the mention of natural catastrophes, and the listing of prohibited fund-raising activities) becomes redundant verbiage that was totally needless-a situation that cannot be entertained in any interpretation of a legal statute.

The second refuting argument is that if the claim of the Prosecution is accepted, then-in view of the fact that both ICDS and HODA are private companies that have entered into civil contracts with a European partner-all business contracts in Egypt cannot be implemented before taking prior permission from the Ministry of Social Affairs-a patently absurd proposition.

5- What is particularly striking in this charge is that there are dozens of private and quasi-governmental research centers like ICDS and HODA in Egypt, all of which have for years received funding from abroad for their research projects without taking prior permission from any governmental authority. Yet not a single one of them has ever been indicted or tried on the basis of this Military Decree. Thus to charge and try Dr.Ibrahim on the basis of this Decree is a unique incident in Egyptian

criminal history. It can only be interpreted as a case of flagrant selectivity by which the state chose to target one person (and by doing so to send a chilling message to other private institutions concerned with democracy and human rights.)

Adding to the bizarre nature of this charge is that the Ibn Khaldoun Center has since its inception in 1988, been publishing its annual financial report which clearly indicated all the fundings it received from abroad. Such transparency is tantamount to a public notification to the Egyptian authorities regarding the funding received by the Center. It is therefore unexplainable why the authorities have permitted this practice to continue for eight years before deciding to indict Prof. Ibrahim.

Indeed, the whole issue of foreign funding for research centers was publicly and heatedly debated in the most prominent Egyptian daily papers in 1994, i.e., two years **after** the promulgation of Military Decree No. 4 of 1992. That debate was initially launched by a virulent attack on the Ibn Khaldoun Center and Dr. Ibrahim for planning a conference on minorities in the Arab World, in which he included among the minorities the Copts in Egypt. ***Why did the government wait to prosecute him until many years later? And why did it only select the funding of the European Commission, when there are many other ICDS projects funded by other donors that were simultaneously under execution?*** The likely answer is that Dr. Ibrahim, had provoked the anger of the regime (at the time of his arrest) by his plans to train Egyptian election monitors for the fall 2000 parliamentary elections. His arrest, trial and conviction by the regime would not only put an end to his irksome activism and effectively silence him, but would also send a message to others working in the field of human rights that there are strict limits to how far they can go.

Charge # 3: That Dr. Ibrahim is guilty of the felony stipulated in statute No. 80 D of the Penal Code, which criminalizes "any Egyptian who intentionally, and for personal gain, disseminated false rumors **abroad** regarding domestic conditions that might have the effect of defaming the State and undermining its prestige." These alleged false rumors to which the Prosecution referred, related to statements by Dr. Ibrahim concerning the rigging of elections and religious persecution against Egypt's Coptic citizens.

The Prosecution's Evidence and Argument:

As proof of its charge against Dr. Ibrahim that he has spread lies and rumors **abroad** regarding the rigging of elections and the persecution of the Copts, the ***Prosecution submitted in evidence one faxed letter dated three years earlier (!)*** in September 1997, addressed by him to a German Protestant Organization. This fax constituted a proposal for a joint project to promote a more democratic culture. In its preamble was mentioned that (i) the 1995 national elections were marred by violence and the arrest of opposition candidates; and (ii) the Copts are increasingly subjected to discrimination by certain political factions, and exposed to physical and psychological harassment by the Islamists.

These statements, the Prosecution claimed, were obvious lies, obvious to every honest citizen in the land. ***The fact that this letter was "faxed" to the German Organization, the Prosecution said, proves conclusively that these alleged lies were disseminated abroad, since electronic means (i.e. the fax) were used to deliver the statements outside Egypt.***

The Defense's Argument:

1- What Dr. Ibrahim is charged with having said regarding elections and the Copts are neither lies, nor rumors, but substantiated facts that were widely discussed in the Egyptian press. The prosecution failed to provide any evidence whatsoever to contradict these facts. Moreover, Dr. Saad was never questioned regarding these charges during the interrogation phase following his arrest in June 2000.

2- The distinction between speaking "at home" or "abroad" is totally meaningless in this era of open skies and instant communication between all parts of the globe. It is ridiculous to assume that what is said internally is not heard abroad. Indeed an important task of all foreign embassies is to monitor the local press and intellectual circles and to report to their home country.

3- It is absurd to imagine that any single individual, helped by a handful of young social researchers, can provide studies that would contribute in any significant manner to defaming a country or influencing the overall policy of foreign powers. The torrent of information published and aired in the Egyptian media swamps any individual contribution by a single researcher.

4- If it is claimed that the statements made by Dr. Ibrahim have harmed Egypt, it was

incumbent upon the government to: (i) Show clearly the extent of the harm that befell the country as a direct consequence of these statements, as distinct from similar statements published by other writers in the Egyptian press who day in and day out have attacked the government on all fronts; and (ii) Indicate why only the statements of Dr. Ibrahim on these two issues were singled out as deserving of prosecution.
The prosecution failed to address these crucial points.

5- The prosecution has conflated "Egypt" with the ruling "regime." The "prestige" of the regime and its criticism should not be disingenuously interpreted as an attack on the Egyptian nation, as is the want of authoritarian regimes in order to suppress opposition.

6- ***The writings of Dr. Ibrahim did not accuse the government of persecuting the Copts, but rather with institutionalized discrimination against them.*** This he has been saying for years, and so have other prominent Egyptian Moslem and Coptic writers, and it is certainly no secret to international observers. Dr. Ibrahim has documented this discrimination in several of his books and articles over the last two decades. It is therefore not understandable how the statements cited by the Prosecution in its indictment of Dr. Ibrahim could be of such calamitous dimensions as to endanger, now, Egypt's national security.

7- **Even *if, hypothetically, the statements regarding the elections and the Copts were untrue, this should provide no cause for prosecution.*** Error is inevitable in all public debate, hence even false statements directed against the government should be protected with the heaviest possible presumption that they are made without malice, in order to ensure that free speech remains uninhibited and robust. The Egyptian government and its President have repeatedly stated their commitment to these values, leading researchers like Dr. Ibrahim to believe that such exercise of opinion was welcomed. Hence, the principle must be upheld that a government does not entrap its citizens by calling for democratic practices and then criminalizing their actual exercise.

8- Consequently, the expression of opinion should receive absolute protection because it is essential to the workings of a democratic society and the protection of its central values of freedom. Debate on public issues will be severely inhibited if a speaker must run the risk of having to provide conclusive proof of his statements in court. This would have a chilling effect on all free speech regarding public affairs. To

provide a minimum of justification to penalize Dr. Ibrahim on this count, the following at least should have been conclusively proved beyond any reasonable doubt by the Prosecution: (i) that his spoken or published material was disseminated with full knowledge of its falsity, or with reckless disregard for the truth; and (ii) that this was done with malice aforethought in the face of clear and present danger to Egypt's national security. The Prosecution failed completely to provide any evidence regarding these points.

9- Finally, *the government cannot act in a selective manner with regard to citizens who perform the same act. Thus, if an act is punishable by law, then all such acts that are brought to the attention of the government must be punished. The government is not permitted to pick and choose selectively at its own arbitrary discretion among those guilty of that act.*

A myriad number of analysts and commentators have accused the government in lectures and in the Egyptian Press of systematic rigging of elections. Indeed this is an established fact of life that is recognized by all Egyptians: young and old, rich and poor, the educated as well as the illiterate. Samples of many clippings to that effect were submitted to the Court. Several other writers have pointed to blatant institutionalized discrimination against the Copts. Numerous samples of these accusations too were also submitted to the Court. The words which the Prosecution quoted above from the personal fax sent by Dr. Ibrahim to the German Protestant Organization---within the context of a proposal to fund a scholarly research project---pale completely beside the vitriolic attacks on the government by other writers on these two issues. None of these writers were ever brought to trial for such criticisms.

Charge # 4: That the defendant through **ruse and trickery** managed to acquire monies belonging to the European Commission by means of concluding an agreement with the latter to fund a **fictitious project**; and that he contrived expenses, and manufactured 60,000 voter registration cards of Egyptian citizens for the purpose of embezzling the Donor's funds.

The Prosecution's Evidence and Argument:

a) The Evidence presented:

1- The testimony of Nibal Abdel-Nabi, who worked for some time as a secretary in ICDS, and then became treasurer at HODA. In her testimony she claimed that she had deposited cheques drawn from the HODA account, amounting to 160,000 Egyptian Pounds ($40,000), in Dr. Ibrahim's personal account. She

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2- The existence of 60,000 photocopies of voter ID cards, were presented as evidence of forged documents based on the Prosecution's allegation that none of the names on them were found on the official registered voting lists.

(b) The Argument put forth:

1- Prosecutors argued that even though the contracts between the European Commission and both ICDS and HODA are private civil contracts, yet the State has the right as well as the obligation to pursue fraud wherever it is found, and prosecute the perpetrators in order to protect society's moral fiber.

2- Prosecutors claimed, but showed no evidence except Nibal's testimony, that Dr. Saad planned and organized the voter registration scheme to falsely register voters in order to take additional money from the EC.

The Defense's Argument:

1- The testimony of Nibal Abdel-Nabi appears to have been fabricated in order to implicate Dr. Ibrahim. This is suggested by the fact that it was Nibal who phoned Dr. Ibrahim three days before his arrest and asked to bring some of her "important papers" to store at his home, which she did. These were later found to be the alleged forged registration cards. She was the only one among those indicted who was not detained in prison during the period of the interrogation by the Prosecutor prior to the trial. All other defendants were held in prison for 45 days. Nor did she appear in court during the entire course of the trial, except on the two final days in which the Court passed sentence. (Nibal received a one year suspended sentence)

2- No ruse or trickery was used by Dr. Ibrahim in contracting with the European Commission. The EC has a permanent office in Cairo, and entered into contracts for

the two projects in question after numerous visits to the offices of ICDS and HODA, and after lengthy detailed discussions to ascertain the feasibility of the projects and the ability of ICDS and HODA to execute them. On the other hand, the Prosecution failed to provide any evidence of the ruse and the trickery that it claims was used to lure the EC to enter into contractual agreements with ICDS or HODA. Nor did the Prosecution produce any evidence to substantiate its claim that the projects were fictitious. On the other hand, the defense presented substantive reports approved by the EC detailing the project's activities, as well as several affidavits by the EC expressing its full satisfaction with the way the projects were conducted, and with their financial accounts.

3- The contrived aspect of this case---which aimed solely at penalizing Dr. Ibrahim for his activism against the authoritarian practices of the regime---is clearly exposed by the Prosecution's treatment of Ms. Amina Shafik. Dr. Amina Shafik, in her capacity as Secretary General of HODA was responsible in her testimony for the work at this organization in the same capacity as that served by Dr. Ibrahim at ICDS. Although she admitted her full responsibility for the activities of EC project, the Prosecution, for no understandable reason, did not implicate her in charges against HODA, but indicated Dr. Ibrahim instead. There can be hardly stronger evidence of the selective and punitive aspect of the Prosecution's entire case.

4- The 60,000 ***voter registration cards that the Prosecution claimed were fabricated were in fact only photocopies of registration cards. The Prosecution thus failed even to show that any forgery of any kind was committed.*** A State Security Police investigator testified that the names on the photocopies were fictitious and did not appear on any official list of registered voters. However, no official voter lists were submitted to support this allegation, nor was any affidavit from the competent authorities submitted as evidence to either the presence or absence of these names from the lists of registered voters in the districts in question.

5- **Regarding the purpose of the photocopies of voter IDs**: One of the goals of the EC projects was to encourage and promote political participation by Egyptian citizens. This goal was addressed through activities such as rallies and education campaigns, and producing television spots. These were the activities that ICDS and HODA were committed to undertake as per their contracts with the EC. The EC never required nor did ICDS or HODA promise in any contract to help register a specific number of voters in order to obtain the project funds. The registration drive by ICDS was no more than a voluntary initiative on its part, and the photocopies were

merely an administrative procedure intended to provide a rough criterion of the effectiveness of the activities of its staff in the field.

6- Finally, the Prosecution claimed that Dr. Ibrahim embezzled the projects funds by means of issuing bogus expense checks, which he then deposited in his personal bank account. To investigate the veracity of this charge an expert committee of the Central Bank of Egypt was commissioned by the Court to look into all the personal bank accounts of Dr. Ibrahim as well as those of ICDS and HODA. The final report of the Committee—which was submitted as evidence to the Court—determined the following:

(i) That they found no evidence in Dr. Ibrahim's personal account of the alleged bogus checks.

(ii) That his personal account showed no evidence of any undue or suspicious activity.

(iii) That he has not transferred any amounts from the accounts of ICDS or HODA to his own personal account, except for a rent payment owed to him (for the HODA premises). Nor were there any withdrawals from said accounts of ICDS or HODA for his own personal use.

(iv) Contrary to the Prosecution's allegations the Committee reported that Dr. Ibrahim has, since 1997, provided loans from his personal account to both ICDS and HODA, and that the total of the outstanding loans, up till the time of his arrest, was 395,096 Egyptian Pounds ($100,000)

7- It is unprecedented that the state should inject itself in a civil contract between two private entities who entered into a contractual agreement voluntarily, in the absence of any complaint by either party against the other. Such unsolicited state intervention forms a dangerous precedent of interference in private contractual relations that will send a chilling signal to the business community in Egypt and abroad. In this case no public funds whatsoever were at issue, nor had the parties attempted to move funds outside the country. The opposite was true: the contract brought flows of funds into Egypt and provided useful employment for young persons to engage in socio--political development activities fully in line with the frequently-declared objectives of the highest leadership of the country..

8- ***What is most striking about this charge which—together with the 7-year prison sentence it drew in two trials before State Security Courts—is its surreal nature, for* the EC not only did not register any complaint, but after knowing**

of the charges leveled against Dr. Ibrahim, stated in several official affidavits submitted to the Court that it (the EC) was fully satisfied with the professional and financial execution of the projects, and that the accounts of the projects were examined by EC auditors and found satisfactory. Under these conditions it is hard to imagine a more bizarre indictment of embezzlement, let alone one that warrants a conviction.

9- In fact this manner of State intervention in a purely private civil contract is **unique** in the annals of Egyptian courts. It violates not only the basic tenets of reason, but also the basic right of citizens to be held safe from arbitrary intervention in their private affairs. Not to restrict the jurisdiction of the State in such private contractual agreements would open the floodgates to State intervention in every aspect of private life---a situation which has no precedent in civilized nations not even in the most entrenched authoritarian systems.



Increasing Interest From the World Media During the Proceeding of the Trial

SPEECH BY CHRIS PATTEN, MEMBER OF THE EUROPEAN COMMISSION, EXTERNAL RELATIONS

Patten, Commission. - Mr President, the trial of Dr Saad Eddin Ibrahim and his colleagues has aroused widespread international interest and concern, not least among those who, like many of us here, consider ourselves true friends of Egypt and the Egyptian people. When Dr Ibrahim and his co-accused successfully appealed for a retrial last February, we hoped that the best traditions of justice would prevail, not only on the merits of the case, but because of the evident damage to Egypt's international reputation caused by the handling of the case by the Egyptian authorities. We were therefore profoundly shocked on 29 July when Dr Ibrahim was again sentenced to seven years' imprisonment with hard labour, a cruel sentence for a man in his frail physical condition. A further four defendants were also sentenced to prison and the remaining 24 have suspended sentences. Even if the charges were credible, and we do not find them so, these sentences are completely disproportionate. The following day I personally voiced my dismay and repeated that, despite careful monitoring and a mid-term external audit, the Commission has no evidence of financial or other wrongdoings by Dr Ibrahim or his co-defendants with respect to the two NGO contracts managed by them.

We made this clear in an affidavit submitted during the appeal. Furthermore, I repeated then and I repeat now that we deplore the use of state security courts and procedures to pursue cases of this nature. Even the Court of Appeal has misgivings on the use of Military Court Order No 4 under which this prosecution was brought. We were disturbed by the decision to retry the defendants after a successful appeal and despite Dr Ibrahim's failing health. We are troubled by the conduct of the trial and the speed and manner of the court's decision. This unseemly rush to judgment did nothing to improve the court's credibility. The case has been closely followed by the EC and Member States and we made our concern clear at the highest levels from the beginning. With respect to the charge of accepting foreign European Union funds without authorization, the Commission insists that direct grants to civil society are perfectly proper and are covered by the EU-Egypt Framework Convention on Financial and Technical Cooperation. At the conclusion of the first trial last year, the severe sentences led to an EC statement on 23 May and the presidency declaration two days later, expressing deep concern... Then, as now, the European Union stressed the importance it attaches to the development of civil society and reiterated that actions to this end are an integral part of Barcelona and bilateral programming which Egypt has signed up to. With respect to the claimed misuse of EU funds, the Commission is, to say the least, surprised that the Court has reportedly ruled as irrelevant the views of the Commission, the alleged victim, that its normal monitoring procedures, including an external mid-term audit, gave no cause for concern whatsoever, financial or otherwise. We have no access at present to the NGO files, which have been confiscated by the authorities. The European Union has always hoped that due legal process and justice would prevail. We have scrupulously avoided any intervention that might prejudice that expectation. The Commission's affidavit during the appeal was strictly factual and correct. We are concerned that the Court, in its written explanations, is reported to have implied the contrary. The Commission and the Member States continue to follow the case closely. The Cairo-based Troika has already visited Dr Ibrahim in prison and the Swedes visited again this weekend. We are in close touch with the family. If, as first press reports indicate, the Court's formal explanation of its verdict, which still has to be translated, misrepresents the European Union's position, we will not hesitate to rectify it. The legal process is not finished and I understand that the defendants will appeal. The Egyptian authorities are well aware of the wider implications of a judgment that is perceived as unjust and politically influenced. Only the due process of law in full transparency can prevent further damage to Egypt's international standing. The Ibrahim case raises issues of real concern, but the overall human rights situation in Egypt is complex and not entirely clear. There is some cause for optimism, for example, in relation to women's rights, judicial control of general elections and social legislation. But there are also some signs which give cause for concern, such as the new law on non- governmental

organizations, the alleged harassment of homosexuals referred to earlier and the further arrests of members of the Islamic opposition. What we have to do is discern the trend and react accordingly. The Ibrahim case casts a long, but hopefully temporary, shadow over the Egyptian human rights and democracy movement. Although the international outcry at the verdict has provoked a strong reaction in Cairo, many influential Egyptians accept that Egypt must adopt the highest judicial and democratic standards if it is to achieve its developmental and political ambitions. We can only agree with that. We will continue to use appropriate measures to express our concern on individual cases. We shall discuss the broader issues concerning human rights and the promotion of democracy within the context of our cooperation programming and the enhanced political dialogue that must characterize the new and privileged relationship between the European Union and its Mediterranean partners. I confirm directly to the Member who raised this question that I shall certainly be discussing the matter when, God willing, I visit Egypt myself next month.

THE COURT HAS ALSO LISTENED TO THE FOLLOWING WITNESSES FOR THE DEFENSE DURING THE TRAIL:

1. Dr. Ahmed Kamal Aboul Magd.
2. Dr. Said Elwani Al Naggar.
3. Dr. Abdel Moniem Said Ali.
4. AMB. Mohamed Ibrahim Shaker.
5. Dr. Munir Fahkri Abdel Nour.
6. Mr. Ali Mohamed Ali Salem.
7. Dr. Mohamed Mahmoud Al Gohari.
8. Gen. Ahmed Mahmoud Abdel Halim.
9. Dr. Hossam Hassan Badrawi.

Among the people listed above are a university professor, a former ambassador, a member of parliament, former generals, and esteemed writers. Some of them are also trustees of the Ibn Khaldun Center.

The first testified that the defendant "is a social researcher of unique character. He is interested in studying public issues and does not write for foreign bodies. If he believes in something he does it. ***He is known for his patriotism. His writings did not go beyond the published issues in the newspapers.*** The purpose of the studies he conducts and the criticism he launches is to reform society. The report he wrote on the elections records positive and negative aspects". The witness also said that he went with the defendant to the United States upon invitation by a center for studies there and all of them reflected the same views.

The second testified that the defendant is a well-known name in the Arab and international community in the field of sociology. No one matches him in his activity and ability to express himself in conferences. ***It is untrue that the defendant tarnishes Egypt's image. It is those who put the defendant behind the bar that tarnish Egypt's reputation.*** As the defendant lives in the age Internet, fax, and communications, there is no restriction on information transfer abroad.

As regards the 1995 elections, a committee of composed of members of associations concerned with democracy, including the Ibn Khaldun Center, was formed to monitor these elections. The purpose of the committee was not to cause harm to Egypt's reputation or to distort its image.

As regards the issue of minorities, the People's Assembly previously formed a committee in 1972 which made reports and recommendations. The purpose of these reports and recommendations was to make good relationships prevail among the elements of the nation. The defendant based his opinions on the committee's research.

The third witness testified the he [Abdel Moneim Saidis the director of the Al Ahram Center for Political Studies issued a book on elections in Egypt and associated mistakes. The constitutional court addressed some of these mistakes. The defendant's study on this issue was aimed to see whether the elections were run in accordance wi th the law. The question of minorities is generally raised in sociology and politics in Egypt.***The defendant, a very famous sociologist in the world, has books on this subject. The information he published merely reflects his opinion. His statements about forgery and persecution do not constitute accusation of the state.!***

The fourth witness testified that he [Amb. Mohamed Shaker] is a member of the Board of Trustees of the Ibn Khaldun Center. The defendant provides great services to the Egyptian community. He conducts studies on the role of women in society and the rehabilitation of extremists. He discusses the issue of education. ***The symposiums that were held in the center were attended by state officials.*** The defendant's opinions on the election and on minorities issues were motivated by the fact that he is an ~Egyptian. He does not cause harm to Egypt's reputation inside or outside the country. On the contrary, the defendant was a credit to Egypt in the conferences in which he participated abroad.

The fifth witness testified that the defendant is "an intellectual with opinions on how to activate the civil society and increase the citizen's political participation. His articles come within the context of criticism and under the climate of democracy for which the state calls. The allegations about monitoring the 1995 elections, about the research projects issued by Ibn Khaldun Center with respect to the Coptic issue, and about ***sending these reports abroad by fax do not cause harm to Egypt's image. In fact,***

These projects are a response to the call by the parliamentary committee of the People's Assembly to enhance national unity".

The sixth witness testified that he is the writer of the scenario of the film entitled 'Come and Participate' and is responsible for what he has written. "The film cannot be considered an artistic work, as it has not come into existence yet. Depicting an election committee under a banner reading Committee of deep sleep, with a policeman and observer sleeping, is an intended joke. It means that as everyone sleeps, elections are rigged. It shows that boycotting the elections is negative behavior. The film urges the citizens to cast their votes. It contains no sensation;:!.l publicity nor false rumors. The witness said that he shared with the defendant all the defendant's beliefs, particularly his opinion that development will be achieved only by supporting political and economic freedoms.

The seventh witness testified that the works the defendant wrote or published were mere scientific studies and research projects in sociology. The defendant' s methods do not cause agitation and are not contrary to the law. The activities practiced by the Ibn Khaldun Center are not different from the activities of other similar centers.

The eighth witness, a member of the Ibn Khaldun Center's Board of Trustees, testified that the defendant is a great sociologist, and that the research projects conducted by the Ibn Khaldun Center are taught in other centers and do not cause any harm to national security. He said that he participated in 1999 with the defendant and others, including the Egyptian Foreign Minister, in conference at the National Institute for Strategic Studies in the United States.
The ninth witness testified that the election issue, which the defendant has addressed, had been previously dealt with by many newspapers and information centers. The report issued by the center recorded both negative and positive aspects. The defendant's research on minorities was aimed at investigating the roots of the problems between Moslems and Copts and did not cause any harm to Egyptis reputation.



Optimism Before the Ruling

Summary of the Ruling of the Court of Cassation

on March 18, 2003.

1. Regarding the charge of receiving funds in violation of Military Decree 4/1992: This charge is dismissed because the funds were found to be contractual payments governed by a contract that imposed numerous obligations on the Recipients, subject to stringent conditions, during the entire lifetime of the project. Free donations---that are prohibited by the Decree---on the other hand, require that the Donor relinquish control over the donated funds.

2. The charge of fraud:

The Court finds that Professor Ibrahim is innocent of this charge on two general determinations. The first is that the Trial Court has failed to appreciate that the required constituents of the crime of fraud were not present; and second, that the Donor has, in a written affidavit, denied that he fell victim to any fraud by the Defendant. Hence, the Defendant is innocent of any fraudulent acts, and the charge is dismissed.

3. The charge of defaming the Egyptian State:

After reviewing the statements of Professor Ibrahim concerning discrimination against the Copts and his criticism of election practices, as well as reviewing the statements of numerous persons who testified to his academic integrity, the Court concluded that the objective analysis of the failings of society with the aim of correcting its shortcomings is a valid aim of sociological research, and should constitute no cause for attributing ulterior intentions of malice to the researcher…***The Court is convinced that Saad Eddin Ibrahim is a scholar in his field of specialization and has not shed his loyalty to his mother country, Egypt.. Hence, as per article 47 of the Egyptian Constitution, he is entitled, as is every other citizen---in the interest of the well-being of the society---to give free expression to his opinions by spoken or written word...or by any other legal means. ...The Defendant has utilized his scholarly expertise in the study of the negative aspects within Egyptian civil society in the course of its democratic development. He has enumerated these negative aspects, as recorded in published material, placing them in their historical context, then, without resorting to any intentional falsification, analyzed their causes and provided...supported by international conventions to which Egypt is a signatory…the needed solutions to overcome these negative features.***

What the Defendant has written in his reports and his research studies concerning the rigging of elections and the concerns of the Copts is no more than what has already been published on these subjects in books and the press, or raised in cases before the Egyptian courts. Moreover, in the present age of the communication revolution, where information is readily available to all who seek it, transmitting abroad such information…whether authored by the Defendant or others…in the course of proposing the undertaking of a joint project with a particular organization, with the aim

of developing society, cannot be construed as the transmission abroad of false information or the propagation of malicious rumors.

Thus, the requirements of the crime provided under article (80-d) of the Penal Code are not fulfilled. Hence, the Defendant should be acquitted of this crime, pursuant to article (304) of the Penal Procedural Code. With this finding, the Court sees no need to discuss the plea submitted by the Defendant to dismiss the charge on grounds of the unconstitutionality of statute 80-d.

Final Observations

The defining feature of this prosecution of Dr. Saad Eddin Ibrahim is that the three charges for which he was twice sentenced to 7 years imprisonment, in two trials by State Security Courts, are in fact unique in the history of Egyptian courts of law.

1- It was the first time that anyone or any institution was prosecuted on the charge of violating Military Decree No, 4 of 1992, although almost all Egyptian research centers are regularly funded by foreign donors. (Charge #2)

2- It was the first time that anyone who operates a research institute and publishes research was prosecuted on the charge of defaming Egypt by spreading lies and rumors abroad. (Charge # 3)

3- It was the first time that the State has intervened in a purely private civil contract, uninvited by either of its two principals, to investigate whether one party has defrauded the other; and then unilaterally decided to prosecute the one it deemed to be guilty despite protests to the contrary by his alleged victim.(Charge # 4)

Both the nature of these charges and the manner in which the case was prosecuted leave no doubt as to the pattern of selective persecution adopted by the State against Dr. Ibrahim. This affront to the rule of law was finally corrected by the landmark ruling of Egypt's Court of Cassation on March 18, 2003. Hereunder are the relevant sections of the ruling that struck down the previous sentences of the State Security Courts, and exonerated Prof. Saad Eddin Ibrahim of any wrong doing.

Verdict with a Complete Acquittal From All Charges



Judiciary

Dr. Fathy Khalefa
Chairman Cassation Court

Mr. Gaber Abdel Tawab

Mr. Amin Abdel Alim

Mr. Omar Brake

Mr. Abdel Tawab Abu Taleb

Mr. Fouad Sayed

Mr. Mohamed El Said

Mr. Nafea Farghaly

Mr. Mohamed Metwally